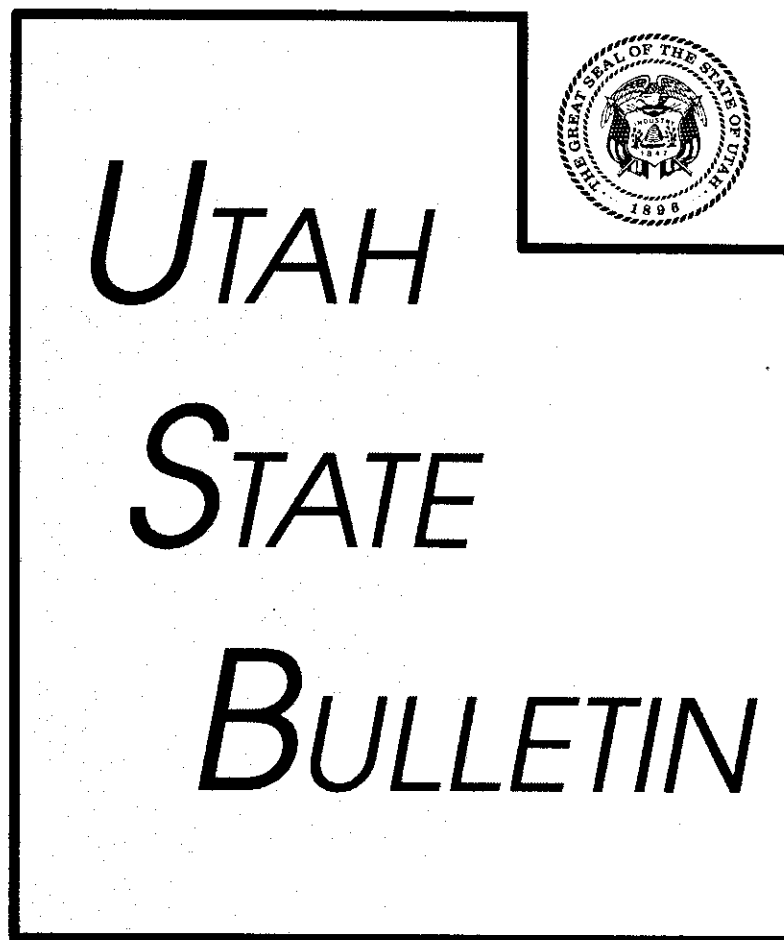

Number 95-24

December 15, 1995



*Prepared by
Division of Administrative Rules
Department of Administrative Services*

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a PROPOSED RULE in the *Utah State Bulletin*, it may receive public comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a NOTICE OF PROPOSED RULE OR CHANGE. This notice provides summary information about the CHANGE IN PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the NOTICE OF PROPOSED RULE OR CHANGE, the text of the CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [example]). A row of dots in the text (•••••) indicates that unaffected text was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the NOTICE OF PROPOSED RULE/CHANGE. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends January 16, 1996. At its option, the agency may hold public hearings.

From the end of the waiting period through March 14, 1996, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 90 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing along with its associated PROPOSED RULE lapse and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by UTAH CODE Section 63-46a-6; and UTAH ADMINISTRATIVE CODE Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

KEY: loans
199[5]6

4-18-5

Commerce, Occupational and
Professional Licensing
R156-37

Controlled Substance Act Rules of the
Division of Occupational and
Professional Licensing

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 17283
FILED: 11/30/95, 15:27
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: After a public hearing, public comment, and Division review, it was found that the proposed rule change supports the research conducted on the use of Schedule IV controlled substances for weight reduction/control to prevent health risks.

SUMMARY: Added back into the rules that a person seeking a controlled substance license must also be currently licensed in the appropriate professional license classification identified in R156-37-301. Changed that a practitioner shall not prescribe, dispense or administer a Schedule III controlled substances for purposes of weight reduction or control. Changed that a prescribing practitioner may prescribe, dispense or administer only a Schedule IV controlled substance in treating excessive weight leading to increased health risks when certain conditions are met.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Subsection 58-37-6(1)

OTHER STATE OR FEDERAL CROSS-REFERENCES: Subsection 58-1-106(1)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None.
- ◆ LOCAL GOVERNMENTS: None.
- ◆ INDIVIDUALS: None.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Commerce
Occupational and Professional Licensing
Heber M. Wells Building, Fourth Floor
160 East 300 South
PO Box 45805
Salt Lake City, UT 84145-0805, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Karen Reimherr at the above address, by phone at (801) 530-6767, or by FAX at (801) 530-6511.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY: submitting written comments to the address above no later than 5:00 p.m. on 01/16/96.

THIS FILING MAY BECOME EFFECTIVE ON: 01/16/96

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.
R156-37. Controlled Substance Act Rules of the Division of Occupational and Professional Licensing.
R156-37-302. Qualifications for Licensure - Application Requirements.

(1) An applicant for a controlled substance license shall:

- (a) submit an application form in content as approved and furnished by the division; and
- (b) shall pay the required fee as established by the division under the provisions of Section 63-38-3.2.

(2) Any person seeking a controlled substance license shall be currently licensed by the state in the appropriate professional license classification as listed in R156-37-301 and shall maintain that license classification as current at all times while holding a controlled substance license.

([2]3) The division and the reviewing board may request from the applicant information which is reasonable and necessary to permit an evaluation of the applicant's:

- (a) qualifications to engage in practice with controlled substances; and
- (b) the public interest in the issuance of a controlled substance license to the applicant.

([3]4) To determine if an applicant is qualified for licensure, the division may assign the application to a qualified and appropriate licensing board for review and recommendation to the division with respect to issuance of a license.

R156-37-604. Prescribing of Controlled Substances for Weight Reduction or Control.

(1) A practitioner shall not prescribe, dispense or administer a Schedule II or Schedule III controlled ~~[stimulant]~~ substance for purposes of weight reduction or control.

(2) A prescribing practitioner may prescribe ~~[-dispense]~~ or administer a Schedule ~~[II or]~~ IV controlled substance in treating excessive weight leading to increased health risks only when all the following conditions are met ~~[for purposes of weight reduction in the treatment of obesity only as an adjunct in a program of weight reduction supervised by a physician and surgeon or osteopathic physician based on calorie restriction, and supplemental weight loss activities including changing lifestyle counseling, and regular exercise, in accordance with all of the following conditions]:~~

(a) medication is used only as an adjunct to a comprehensive weight loss program based on supplemental weight loss activities including, but not limited to, changing lifestyle counseling, nutritional education, and a regular, individualized exercise regimen;

(b) prior to initiating treatment the prescribing practitioner shall:

(i) determine through thorough review of past medical records that the patient has made a substantial good-faith effort to lose weight in a comprehensive weight loss program without the use of controlled substances, and the previous regimen has not been effective;

(ii) obtain a complete history, perform a complete physical examination of the patient, and rule out the existence of any recognized contraindications to the use of the medication(s);

(iii) determine and document this assessment in the patient's medical record, that the health benefit to the patient greatly outweighs the possible risks of the medications prescribed; and

(iv) discuss with the patient the possible risks associated with the medication and have on record an informed consent which clearly documents that the long term effects of using controlled substances for weight loss or weight control are not known;

(c) throughout the prescribing period, the prescribing practitioner shall:

(i) supervise, oversee, and regularly monitor the patient, including his participation in supplemental weight loss activities, efficacy of the medication, and advisability of continuing to prescribe the weight loss or weight control medication; and

(ii) maintain a central medical record, containing at least, the goal of treatment or target weight, the ongoing progress toward that goal or maintenance of the weight loss, the patient's supplemental weight loss activities with documentation of compliance with the comprehensive weight loss program; and

(d) the prescribing practitioner shall immediately discontinue the weight loss medication in any of the following situations:

(i) the practitioner knows or should know that the patient is pregnant;

(ii) the patient has consumed or disposed of any controlled substance other than in compliance with the prescribing practitioner's directions;

(iii) the patient is abusing the controlled substance being prescribed for weight loss;

(iv) the patient develops a contraindication during the course of therapy; or

(v) the medication is not effective or that the patient is not abiding with and following through with the agreed upon comprehensive weight loss program. (a) before initiating treatment utilizing a Schedule III or IV controlled substance, the prescribing practitioner determines through review of his own records of prior treatment, or through review of the records of prior treatment which another treating prescribing practitioner or weight loss program has provided to the prescribing practitioner, that the patient has made a substantial good faith effort to lose weight in a treatment program utilizing a regimen of weight reduction based on caloric restriction, nutritional counseling, behavior modification, and exercise, without the utilization of controlled substances, and that the treatment has been ineffective;

~~(b) before initiating treatment utilizing a Schedule III or IV controlled substance, the prescribing practitioner obtains a thorough history, performs a thorough physical examination of the patient, and rules out the existence of any recognized contraindications to the use of the controlled substance to be utilized;~~

~~(c) the practitioner makes a finding, and documents that finding in the patient's medical record, that the health benefit to the patient which may result from weight loss resulting from the use of Schedule III and IV controlled substances greatly outweighs the risks associated with the patient's use of Schedule III and IV controlled substances for weight loss;~~

~~(d) the prescribing practitioner shall establish a target weight to be reached by the patient using controlled substances for the purpose of weight loss. This target weight shall be recorded in the practitioner's medical record regarding that patient;~~

~~(e) the patient signs an informed consent which includes clear documentation that the long term effects of using controlled substances for weight loss or maintenance are not known;~~

~~(f) the practitioner shall not prescribe, dispense or administer any Schedule III or IV controlled substance when he knows or has reason to believe that a recognized contraindication to its use exists;~~

~~(g) the practitioner shall not prescribe, dispense or administer Schedule III controlled substances for weight reduction for a period longer than 12 weeks in any one year period. The one year period shall begin counting the first day of the drug therapy as indicated on the prescriber instructions for use.~~

~~(h) the practitioner shall not prescribe, dispense or administer any Schedule III or IV controlled substance in the treatment of a patient who he knows or should know is pregnant;~~

~~(i) the practitioner shall not initiate or shall discontinue prescribing, dispensing or administering all Schedule III or IV controlled substances for weight reduction immediately upon ascertaining or having reason to believe:~~

~~(i) that the patient who has not yet reached the target weight established in accordance with Subsection (d), has failed to lose weight while under treatment with a controlled substance or controlled substances over a period of 28 days, which determination shall be made by a scheduled weighing of the patient at least every fourteenth day, except that a patient who has never before received treatment for obesity utilizing any controlled substance who fails to lose weight during his first treatment attempt may be treated with a different controlled substance for an additional 14 days;~~

~~(ii) that the patient has developed tolerance, a decreasing contribution of the drug toward further weight loss, to the anorectic effects of the controlled substance being utilized;~~

~~(iii) that the patient is abusing the controlled substance being prescribed for weight loss, or has a history of or shows a propensity for drug abuse or alcohol abuse; or~~

~~(iv) that the patient has consumed or disposed of any controlled substance other than in compliance with the prescribing practitioner's directions;~~

~~(j) a practitioner shall establish a written record and plan for weight maintenance by administering or prescribing of Schedule IV controlled substances, and medically supervising a patient who has achieved the target weight established under Subsection (d);~~

~~The plan and evidence of medical supervision shall be included in the practitioner's medical record regarding that patient.]~~

KEY: controlled substances, licensing
[1995]1996

58-1-106(1)
58-37-6(1)

Commerce, Real Estate **R162-6** Licensee Conduct

NOTICE OF CHANGE IN PROPOSED RULE

DAR File No.: 17173

FILED: 11/24/95, 09:40

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF OR REASON FOR THIS FILING: Proposed rule changed as a result of further reflection by the Real Estate Commission and the Division Director.

SUMMARY: The size of the brokerage name has been changed from a mandatory requirement that it be no less than half the size of the name of individual licensees to a requirement that it be identified in a clear and conspicuous manner. The no less than half the size requirement remains as a "safe harbour" but is not the only way that the "clear and conspicuous" standard may be met.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS FILING: Section 61-2-5.5

OTHER STATE OR FEDERAL CROSS-REFERENCES: Subsection 61-2-11(13)

ANTICIPATED COST OR SAVINGS TO:

◆THE STATE BUDGET: None.

◆LOCAL GOVERNMENTS: None.

◆INDIVIDUALS: None.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None.

THE FULL TEXT OF THIS FILING MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

Commerce
Real Estate
Heber Wells Building, Second Floor
160 East 300 South
PO Box 45806
Salt Lake City, UT 84145-0806, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS FILING TO:

Shelley Wismer at the above address, by phone at (801) 530-6747, or by FAX at (801) 530-6749.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS FILING BY: submitting written comments to the address above no later than 5:00 p.m. on 01/16/96.

THIS FILING MAY BECOME EFFECTIVE ON: 01/16/96

AUTHORIZED BY: Shelley K. Wismer, Staff Legal Counsel

R162. Commerce, Real Estate.

R162-6. Licensee Conduct.

R162-6-1. Improper Practices.

6.1.1 False devices. A licensee shall not propose, prepare, or cause to be prepared any document, agreement, closing statement, or any other device or scheme, which does not reflect the true terms of the transaction, nor shall a licensee knowingly participate in any transaction in which a similar device is used.

6.1.1.1 Loan Fraud. A licensee shall not participate in a transaction in which a buyer enters into any agreement that is not disclosed to the lender, which, if disclosed, may have a material effect on the terms or the granting of the loan.

6.1.1.2 Double Contracts. A licensee shall not use or propose the use of two or more purchase agreements, one of which is not made known to the prospective lender or loan guarantor.

6.1.2 Signs. It is prohibited for any licensee to have a sign on real property without the written consent of the property owner.

6.1.3 Licensee's Interest in a Transaction. A licensee shall not buy, sell, or lease or rent any real property as a principal, either directly or indirectly, without first disclosing in writing on the purchase agreement or the lease or rental agreement his true position as principal in the transaction. A licensee will be considered to be a principal for the purposes of this rule if he is an owner, officer, director, partner, member, or employee of an entity which is a principal in the transaction. In the case of a licensee who is a stockholder but who is not an officer, director or employee of a corporation which is a principal in the transaction, the licensee will be considered to be a principal for the purposes of this rule if he owns more than 10% of the stock of the corporation.

6.1.4 Listing Content. The real estate licensee completing a listing agreement is responsible to make reasonable efforts to verify the accuracy and content of the listing.

6.1.4.1 Net listings are prohibited and shall not be taken by a licensee.

6.1.5 Advertising. This rule applies to all advertising materials, including newspaper, magazine, radio, and television advertising, direct mail promotions, business cards, door hangers, and signs.

6.1.5.1 Any advertising by active licensees that does not include the name of the real estate brokerage as shown on Division records is prohibited except as otherwise stated herein.

6.1.5.2 If the licensee advertises property in which he has an ownership interest and the property is not listed, the ad need not appear over the name of the real estate brokerage if the ad includes the phrase "owner-agent" or the phrase "owner-broker".

6.1.5.3 Names of individual licensees may be advertised in addition to the brokerage name. If the names of individual